DEPARTMENT OF STATE
THE LEGAL ADVISER

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CONFIDENTIAL

August 20, 1959

DEPARTMENT OF STATE A/CDC/MR
RELEASED BY J m Razi DATE 5/6/82

MEMORANDUM

To: L/MSA - Mr. Rehm

From: L/T - Mr. Bevans GB

Subject: Exchanges of notes of May 21, 1959 with Libya on 1959 Aid Program

In your reference slip of August 7, 1959 to Mrs. McDowell you request my views on whether or not the exchange of notes of May 21, 1959 at Benghazi with Libya constitutes an agreement, particularly in view of the omission of the phrase "this fiscal year" from the Libyan quotation in Arabic of the U.S. note.

In my opinion, the above-mentioned agreement should be considered as a binding agreement and in force. The final paragraph of the Libyan note accepts the terms of the United States and, as such, binds the Libyan Government to those terms. The erroneous omission of the phrase "this fiscal year" could hardly be attributed to a misunderstanding on the part of the Libyan Government, in view of the negotiating history of the agreement. If there were such a misunderstanding there would exist a serious basis for questioning the validity of the agreement but at most the agreement would be merely voidable, not void.

That considerable significance was attached to the above-mentioned phrase by the negotiators is shown by the record. For example: telegram Benghazi ICATO 703 of May 5 made allotment of full $11 million for Libya dependent upon reaching of satisfactory agreement with Libya with respect to the granting of special purpose funds "as related to '50"; telegram 548 of May 7 from Benghazi reports that Ambassador had discussed proposed exchange of notes on FY 1959 with Prime Minister and that "he (the Ambassador) left copies of informal Arabic translation with him"; telegram 557 of May 12 reported GOL prepared proceed with exchange of notes on FY '59 aid but that acceptance US offer "is without prejudice GOL's request for revision paragraph C of 1954 exchange of notes"; by telegram 570 to Benghazi, Department and ICA stated they had no objection to Libyan stipulation that acceptance FY 1959 offer is without prejudice GOL request for revision of paragraph C of 1954 agreement.

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While it would not appear that omission of the words "this fiscal year" from the Arabic version of the U.S. note affects the validity of the agreement, it is possible that the Libyans will insist that failure on the part of the United States to call attention to that omission constitutes an agreement to continue the commitment indefinitely. This would be especially unfortunate in view of the Department's repeated

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instructions that the utilization of the special purpose funds at the discretion of the Libyan Government was to be limited to FY 1959. The press statement, reported in airgram G-330 from Tunis, indicates that the commitment that aid for the Libyans would be given directly to the Libyan Government, and not channelled through American aid organizations, was of an indefinite character and not limited to any particular fiscal year. In view of these considerations, it may be highly advisable for the United States to take such action as may be necessary (1) to remind the Libyans that the error has not been unrecognized, that we will apply the agreement as though the phrase "this fiscal year" were included in the Arabic version of the U.S. note, and (2) to give as much publicity as possible to a corrected version in order to at least preserve our negotiating position. If no effort is made to correct the omission the Libyans may feel that it is appropriate to insist in next year's negotiations that the Libyan public has been led to believe that the commitment is of an indefinite character and therefore the matter is no longer a subject for negotiation.

In seeking to correct the omission involved, it may be questionable whether it would be advisable to seek a clarification of the question as to whether the United States fiscal year or the Libyan fiscal year is referred to. In view of the tie-in with the use of Wheelus base, it would seem that the amounts to be transferred are so much in the nature of an annual rental that the question as to which fiscal year is involved is of little consequence so far as international relations are concerned. An effort to go beyond the exact wording of our note in an effort at clarification may lead the Libyans to question our motives and possibly to make new demands on their part.

Accordingly, it is recommended that the Embassy at Benghazi be instructed to send a unilateral note along the following lines to the Libyan Government unless the Embassy perceives serious objection thereto:

> "I have the honor to refer to the agreement between the United States and Libya regarding economic assistance effected by exchange of notes at Benghazi on May 21, 1959. It has been noted that the translation of the United States note set forth in the Libyan note omits the words 'this fiscal year' which appear in the first paragraph of the United States note.
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> "I wish to confirm the understanding of my Government that in the application of the agreement of May 21, 1959 my Government will consider the Libyan note of that date as having been intended to include the words 'this fiscal year' in the first paragraph of the United States note regarding utilization at the discretion of the Libyan Government of the economic assistance from the special purpose funds referred to therein."

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